

statement include the financial information required in this paragraph (c) with respect to a particular entity.

(d) *Reporting and disclosure under ERISA.* (1) For any employees' health benefits plan that includes an M+C organization in its offerings, the M+C organization must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the particular M+C organization) under the Employee Retirement Income Security Act of 1974 (ERISA).

(2) The M+C organization must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

(e) *Loan information.* Each organization must notify HCFA of any loans or other special financial arrangements it makes with contractors, subcontractors and related entities.

(f) *Enrollee access to information.* Each M+C organization must make the information reported to HCFA under § 422.502(f)(1) available to its enrollees upon reasonable request.

§ 422.520 Prompt payment by M+C organization.

(a) *Contract between HCFA and the M+C organization.*

(1) The contract between HCFA and the M+C organization must provide that the M+C organization will pay 95 percent of the "clean claims" within 30 days of receipt if they are submitted by, or on behalf of, an enrollee of an M+C private fee-for-service plan or are claims for services that are not furnished under a written agreement between the organization and the provider.

(2) The M+C organization must pay interest on clean claims that are not paid within 30 days in accordance with sections 1816(c)(2)(B) and 1842(c)(2)(B).

(3) All other claims must be approved or denied within 60 calendar days from the date of the request.

(b) *Contracts between M+C organizations and providers and suppliers.* Contracts or other written agreements between M+C organizations and providers must contain a prompt payment provision, the terms of which are developed

and agreed to by both the M+C organization and the relevant provider.

(c) *Failure to comply.* If HCFA determines, after giving notice and opportunity for hearing, that an M+C organization has failed to make payments in accordance with paragraph (a) of this section, HCFA may provide—

(1) For direct payment of the sums owed to providers, or M+C private fee-for-service plan enrollees; and

(2) For appropriate reduction in the amounts that would otherwise be paid to the organization, to reflect the amounts of the direct payments and the cost of making those payments.

§ 422.524 Special rules for RFB societies.

In order to participate as an M+C organization, an RFB society—

(a) May not impose any limitation on membership based on any factor related to health status; and

(b) Must offer, in addition to the M+C RFB plan, health coverage to individuals who are members of the church or convention or group of churches with which the society is affiliated, but who are not entitled to receive benefits from the Medicare program.

Subpart L—Effect of Change of Ownership or Leasing of Facilities During Term of Contract

SOURCE: 63 FR 35067, June 26, 1998, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart L appear at 63 FR 35106, June 26, 1998.

§ 422.550 General provisions.

(a) *What constitutes change of ownership—*

(1) *Partnership.* The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable State law, constitutes a change of ownership.

(2) *Unincorporated sole proprietor.* Transfer of title and property to another party constitutes change of ownership.

(3) *Corporation.* (i) The merger of the M+C organization's corporation into another corporation or the consolidation of the M+C organization with one

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or more other corporations, resulting in a new corporate body, constitutes a change of ownership.

(ii) Transfer of corporate stock or the merger of another corporation into the M+C organization's corporation, with the M+C organization surviving, does not ordinarily constitute change of ownership.

(b) *Advance notice requirement.* (1) An M+C organization that has a Medicare contract in effect and is considering or negotiating a change in ownership must notify HCFA at least 60 days before the anticipated effective date of the change. The M+C organization must also provide updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization.

(2) If the M+C organization fails to give HCFA the required notice timely, it continues to be liable for capitation payments that HCFA makes to it on behalf of Medicare enrollees after the date of change of ownership.

(c) *Novation agreement defined.* A novation agreement is an agreement among the current owner of the M+C organization, the prospective new owner, and HCFA—

(1) That is embodied in a document executed and signed by all three parties;

(2) That meets the requirements of § 422.552; and

(3) Under which HCFA recognizes the new owner as the successor in interest to the current owner's Medicare contract.

(d) *Effect of change of ownership without novation agreement.* Except to the extent provided in paragraph (b)(2) of this section, the effect of a change of ownership without a novation agreement is that—

(1) The existing contract becomes invalid; and

(2) If the new owner wishes to participate in the Medicare program, it must apply for, and enter into, a contract in accordance with subpart K of this part.

(e) *Effect of change of ownership with novation agreement.* If the M+C organization submits a novation agreement that meets the requirements of § 422.552, and HCFA signs it, the new owner becomes the successor in inter-

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est to the current owner's Medicare contract.

[60 FR 45681, Sept. 1, 1995. Redesignated and amended at 63 FR 35067, 35106, June 26, 1998; 63 FR 52614, Oct. 1, 1998]

§ 422.552 Novation agreement requirements.

(a) *Conditions for HCFA approval of a novation agreement.* HCFA approves a novation agreement if the following conditions are met:

(1) *Advance notification.* The M+C organization notifies HCFA at least 60 days before the date of the proposed change of ownership. The M+C organization also provides HCFA with updated financial information and a discussion of the financial and solvency impact of the change of ownership on the surviving organization.

(2) *Advance submittal of agreement.* The M+C organization submits to HCFA, at least 30 days before the proposed change of ownership date, three signed copies of the novation agreement containing the provisions specified in paragraph (b) of this section, and one copy of other relevant documents required by HCFA.

(3) *HCFA's determination.* HCFA determines that—

(i) The proposed new owner is in fact a successor in interest to the contract;

(ii) Recognition of the new owner as a successor in interest to the contract is in the best interest of the Medicare program; and

(iii) The successor organization meets the requirements to qualify as an M+C organization under subpart J of this part.

(b) *Provisions of a novation agreement.*

(1) *Assumption of contract obligations.* The new owner must assume all obligations under the contract.

(2) *Waiver of right to reimbursement.* The previous owner must waive its rights to reimbursement for covered services furnished during the rest of the current contract period.

(3) *Guarantee of performance.* (i) The previous owner must guarantee performance of the contract by the new owner during the contract period; or

(ii) The new owner must post a performance bond that is satisfactory to HCFA.